



DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

Protecting Investors; Promoting Commerce

Michael O. Leavitt
Governor
Ted Boyer
Executive Director
S. Anthony Taggart
Division Director

160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
(801) 530-6600 • FAX (801) 530-6980
e-mail: security@br.state.ut.us
http://www.securities.state.ut.us

April 17, 2003

Ms. Jeanene F. Patterson
Callister Nebeker & McCullough
Gateway Tower East Suite 900
10 East South Temple
Salt Lake City, UT 84133

Re: People's Utah Bancorp
No-Action Letter
File # B00381602

Dear Ms. Patterson:

In response to your March 12, 2003 letter, the Utah Division of Securities ("Division") has reviewed your request for a no-action letter pursuant to the authority granted by § 61-1-25 (5) of the Utah Uniform Securities Act ("Act") and § R164-25-5 of the Utah Administrative Code ("UAC"). In your request, you describe People's Utah Bancorp's ("PUB") share exchange/repurchase offer wherein PUB annually offers to exchange or repurchase for cash a limited number of existing shares. The maximum number of shares to be exchanged or repurchased will be less than 2 percent of each class of shares. For the reasons stated below, the Division would take no enforcement action against PUB if PUB conducts its share exchange/repurchase offer as described in your letter.

In 2000, 2001, 2002, and 2003, PUB requested from the Division a discretionary exemption under §61-1-14 2(s) of the Act for the share exchange/repurchase offer. In 2000, 2001, 2002, and 2003 the discretionary exemption was granted based upon the circumstances of the share exchange/repurchase offer. As stated in your letter, the share exchange/repurchase program is offered only to existing shareholders who have a pre-existing relationship to PUB and access to information regarding PUB and its business.

It is the Division's opinion that registration is not necessary or appropriate for the protection of the investors involved in the share exchange/repurchase offer discussed in your letter. Accordingly, the Division staff will not recommend any enforcement or administrative action should PUB conduct its share exchange/repurchase program as described in your letter.

Ms. Jeanene F. Patterson

April 17, 2003

Page 2

This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the opinion of the Division staff on enforcement or administrative actions based upon your representations.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this No-Action Letter does not absolve any party involved from complying with the anti-fraud provisions contained in § 61-1-1 of the Act.

Respectfully,

A handwritten signature in cursive script that reads "Paula W. Faerber". The signature is written in black ink and is positioned above the typed name and title.

Paula W. Faerber
Staff Attorney

CALLISTER NEBEKER & McCULLOUGH
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
GATEWAY TOWER EAST SUITE 900
10 EAST SOUTH TEMPLE
SALT LAKE CITY, UTAH 84133
TELEPHONE 801-530-7300
FAX 801-364-9127

Jeanene F. Patterson

TO CALL WRITER DIRECT
(801) 530-7406
jfpatterson@cnmlaw.com

March 12, 2003

S. Anthony Taggart, Director
Utah Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

HAND DELIVERED

Re: Request for No-Action Letter Pursuant to Section 61-1-25(5) and Rule 164-25-5

Dear Mr. Taggart:

On behalf of our client, People's Utah Bancorp, a Utah corporation ("PUB"), the undersigned requests, pursuant to Section 61-1-25(5) of the Utah Uniform Securities Act (the "Act") and Rule 164-25-5 of the Utah Administrative Code, and as detailed below, that the staff of the Utah Division of Securities (the "Division") advise the undersigned that it would not take any enforcement action under the Act if PUB were to continue to annually conduct its share exchange/repurchase offer ("Exchange Offer") without registration under the Act. A duplicate copy of this letter and a check for the filing fee in the amount of \$120.00 is also enclosed.

BACKGROUND

In 2000, 2001, 2002 and 2003, we requested, on behalf of PUB, that the Division grant a discretionary exemption pursuant to Section 61-1-14(2)(s) of Act the for the transaction described below. Attached (see Tab 1) is the correspondence relating to those requests, including the letters from the Division granting the request in 2000, 2001, 2002 and 2003. Because PUB is proposing to annually conduct similar Exchange Offers, Gary Bowen at the Division suggested that PUB apply for a no-action letter covering future annual Exchange Offers conducted in a similar manner. Attached (see Tab 2) is a copy of the 2003 Offer to Exchange.

FACTS

PUB is a bank holding company that owns Bank of American Fork (the "Bank"). As of December 31, 2002, PUB had outstanding 130,639 Voting Shares held by 148 shareholders of record and 129,488 Non-voting Shares held by 202 shareholders of record. Some shareholders hold both Voting and Non-voting Shares. PUB does not have any securities registered under the Securities Exchange Act of 1934. There is no public market for the shares of PUB, and to the best of our knowledge there has never been a public market for the securities of PUB or the Bank. A majority of PUB's shareholders reside in Utah.

Over the past few years, there has been an increasing number of instances where shareholders wish to sell shares to create liquidity. Shareholders have approached PUB to see if a repurchase could be effected. PUB has been concerned that the repurchases be done in a uniform way with all remaining shareholders benefitting from any appreciation in the value of PUB.

In order to provide liquidity to its shareholders, PUB intends to annually offer to exchange for a 30-day non-negotiable note, or repurchase for cash, a limited amount of its Voting Shares and Non-voting Shares. *The maximum number of shares to be exchanged or repurchased will be less than 2% of each class of Shares.* The annual Exchange Offer will be at a fixed price approximating the book value of the Shares and will be open for a fixed period of time. The Exchange Offer will be made to all PUB shareholders, other than PUB's directors, who reside in states where the offer can legally be made without undue effort or expense. PUB will not pay any commissions or solicitation fees in connection with the offer.

In 2002, the Exchange Offer was made to approximately 175 shareholders in 15 states. Only five shareholders accepted the Exchange Offer and tendered shares in 2002, while four and 12 shareholders, respectively, accepted the Exchange Offer and tendered shares in 2001 and 2000. Because so few people have participated each year in the Exchange Offer, in 2002 and 2003, PUB sent to its shareholders the attached (see Tab 3) notice of the offer that includes information as to where shareholders may obtain the offering documents if they wish to participate. PUB proposes to continue to do this.

If more shares are tendered than PUB has agreed to repurchase, priority will be given to holders of odd lots who tender all of their shares, and any remaining balance will be prorated across the remaining tendered shares. Currently, as indicated on page 3 of the 2003 Offer to Exchange, the total shares held of record by persons meeting the odd-lot definition is 184 Voting Shares and 303 Non-voting Shares. PUB anticipates that it will not make an Exchange Offer unless it intends to repurchase more shares than are held by all odd lot holders. Therefore, the round lot holders will never be completely precluded from the offer even if all odd lot holders fully participate. As a result of the small number of odd-lot shares, the effect on a round lot holder under any scenario of odd-lot tenders will not rise to the level of creating fundamental fairness issues.

ANALYSIS

Section 61-1-7 of the Act makes it unlawful for any person to offer or sell any security in Utah unless it is registered under the Act or the security or transaction is exempted under the Act. Section 61-1-13(22)(b) provides that the term "offer" "includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value." You have stated that it is the Division's position that an offer to repurchase constitutes an "offer" within the meaning of this provision.

S. Anthony Taggart, Director
March 12, 2003
Page 3

We do not believe that registration is necessary or appropriate in this circumstance, and we therefore request that the Division take a no-action position with respect to PUB's annual Exchange Offers and exempt them from the registration requirements without the necessity of reapplying each year. The Exchange Offers affect only a limited class of persons, namely PUB's existing shareholders, who have a pre-existing relationship to PUB and access to information regarding PUB and its business. *Although the exemption for dealings between an issuer and its existing securities holders found in Section 16-1-14(2)(j) only applies to the offer of securities by an issuer to its securities holders, not offers to exchange or repurchase from the securities holders, the same policy considerations supporting the 14(2)(j) exemption apply to the annual Exchange Offer.*

Please be advised that to the best of our knowledge, there is no pending or threatened legal action, judicial or administrative, that relates, directly or indirectly, to the facts described herein. The transaction described herein has not commenced.

Please also note that PUB filed a Form U-2 Uniform Consent to Service of Process with the Division on April 18, 2000, a copy of which is attached (see Tab 4).

CONCLUSIONS

Accordingly, we respectfully request that the Division determine that registration is not necessary or appropriate for the protection of investors and permit PUB to distribute future annual notices to PUB shareholders and conduct its annual Exchange Offers in the manner described above without registration under the Act and without the necessity to request a 61-1-14(2)(s) exemption for each Exchange Offer.

If you have any questions or comments, or if you need further information, please do not hesitate to contact me.

Very truly yours,

CALLISTER NEBEKER & MCCULLOUGH



Jeanene F. Patterson

JFP:pb

Enclosures

cc: Mark Snyder, Director of Corporate Finance

People's Utah Bancorp:

Dale O. Gunther, President (w/o attaches.)

Larry R. Miner, Senior Vice President and Secretary (w/o attaches.)

Brian D. Thompson, Vice President (w/o attaches.)